IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WA.No. 1179 of 2007()

AGAINST THE JUDGEMENT IN OP.5501/2001 Dated 01/09/2006
.....

APPELLANT/PETITIONER

K.V.ABDUL NASAR, M/S.AKBAR TRAVELS
OF INDIA, 6TH FLOOR DEVELOPMENT BUILDING,
PALTON ROAD, RESIDING AT 69/71 JANJIKAR STREET,
MANDVI, MUMBAI-400 003.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS/RESPONDENTS
---

1. STATE OF KERALA, REP. BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. INTELLIGENCE OFFICER, SQUAD-1, DEPARTMENT OF COMMERCIAL TAXES, GOVERNMENT OF KERALA, ERNAKULAM.

3. THE SALES TAX OFFICER, SECOND CIRCLE KALAMASSERY, PALARIVATTOM, KOCHI-25.

4. THE DEPUTY TAHSILDAR, REVENUE RECOVERY, ERNAKULAM.

BY GOVERNMENT PLEADER SHRI MATHEW.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

W.A. No.1179 of 2007

Dated this, the 25th May, 2007.

JUDGMENT

H.L. DATTU, C.J.

The petitioner is the proprietor of M/s.Abkar Travels of India, having its registered office in Mumbai. It appears that the petitioner is a permanent resident of Mumbai and he would use his vehicle bearing registration No.MH-01/T-9394 in Kerala for his business purposes.

2. The assessing authority, after issuing notice to the petitioner under the provisions of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 has quantified the liability of the petitioner under the aforesaid Act. Aggrieved by the same, the petitioner was before this Court in O.P.No.5501 of 2001. By judgment dated 01.09.2006, the learned single Judge has allowed the Original Petition in part.

3. Aggrieved by the said order, the petitioner is before this court in this Writ Appeal.

4. Learned counsel for the appellant would submit that this court in **Thressiamma L.Chirayil vs. State of Kerala [**2007 (1) KLT 303**]** has struck down the charging provisions in the Kerala Tax on Entry of Goods into Local Areas Act, 1994 and observed that the same is unconstitutional and violative of Article 301 of the Constitution of India.

5. Learned Government Pleader appearing for the Revenue would submit that having aggrieved by the orders passed by this court in **Thressiamma L.Chirayil's** case, have carried the matter by way of a Special Leave Petition before the Apex Court. Learned Government Pleader also submits that the Honourable Supreme Court has not granted any interim order.

6. This court in **Thressiamma L.Chirayil's** case has struck down the charging provisions. In the absence of the said charging provision in the Act to levy entry tax, assessing authority ought not to have levied entry tax under the Act and based on that could not have issued any demand notice to recover tax levied under the Act.

7. In the result the following:

Order

i) Writ Appeal is allowed.

ii) The impugned order passed by the learned single Judge is set aside.

iii) Ext.P5 notice issued by the third respondent and Ext.P7 demand notice issued by the 4th respondent are quashed.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK.